

**Letter of Findings: 01-20160053
Indiana Individual Income Tax
For The Tax Year 2011**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Individual was domiciled in Indiana for the tax year 2011. Therefore, Individual was required to file Individual Income Tax Return.

ISSUES

I. Indiana Individual Income Tax - Residency - Domicile.

Authority: IC § 6-3-1-3.5; IC § 6-3-1-12; IC § 6-3-1-13; IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-3-3-3; [45 IAC 3.1-1-21](#); [45 IAC 3.1-1-22](#); IC § 6-8.1-5-1; IC § 6-1.1-12-37; Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988); Croop v. Walton, 157 N.E. 275 (Ind. 1927); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the Department's proposed assessment for the 2011 tax year.

II. Tax Administration - Non-Filer Penalty and Interest.

Authority: IC § 6-8.1-10-3; IC § 6-8.1-10-1.

Taxpayer protests the imposition of penalty and interest.

STATEMENT OF FACTS

Taxpayer is an individual who owns residential property in Indiana. In September 2010 Taxpayer moved to Ohio. Taxpayer moved back to Indiana September 2012. The Indiana Department of Revenue ("Department") determined that Taxpayer was required to file an Indiana income tax return for the tax year 2011, and that Taxpayer failed to file his 2011 Indiana income tax return. In 2015, Taxpayer sent an unsigned 2011 Indiana IT-40 PNR showing zero Indiana income. The Department determined that Taxpayer was domiciled in Indiana and therefore needed to file a 2011 Indiana IT-40 as a full time resident. The Department therefore, issued a proposed assessment for 2011 for income tax, penalty, and interest.

Taxpayer protested the assessment. An administrative hearing was held. This Letter of Findings ensues and addresses Taxpayer's protest of the proposed assessment for the tax year 2011. Additional facts will be provided as necessary.

I. Indiana Individual Income Tax - Residency - Domicile.

DISCUSSION

The Department assessed Taxpayer income tax for the 2011 tax year on the ground that Taxpayer was an Indiana resident and he failed to file a 2011 Indiana income tax return. Taxpayer contends that he was not required to file a 2011 Indiana income tax return because he was not an Indiana resident. The issue is whether, for the tax year 2011, Taxpayer was an Indiana resident and therefore was subject to Indiana income tax.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax

is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). Thus, the taxpayer is required to provide documentation explaining and supporting his challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

Indiana imposes a tax "upon the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). IC § 6-3-2-2(a) specifically outlines what is income derived from Indiana sources and subject to Indiana income tax. IC § 6-3-1-3.5(a) provides the starting point to determine the taxpayer's taxable income and to calculate what would be their Indiana income tax after applying certain additions and subtractions to that starting point.

For Indiana income tax purposes, resident "includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state" IC § 6-3-1-12; see also [45 IAC 3.1-1-21](#). Nonresident is "any person who is not a resident of Indiana." IC § 6-3-1-13.

Additionally, [45 IAC 3.1-1-22](#) states:

For the purposes of this Act, a person has only one domicile at a given time even though that person maintains more than one residence at that time. Once a domicile has been established, it remains until the conditions necessary for a change of domicile occur.

In order to establish a new domicile, the person must be physically present at a place, and must have the simultaneous intent of establishing a home at that place. It is not necessary that the person intend to remain there until death; however, if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established.

The determination of a person's intent in relocating is necessarily a subjective determination. There is no one set of standards that will accurately indicate the person's intent in every relocation. The determination must be made on the facts present in each individual case. Relevant facts in determining whether a new domicile has been established include, but are not limited to:

- (1) Purchasing or renting residential property
- (2) Registering to vote
- (3) Seeking elective office
- (4) Filing a resident state income tax return or **complying with the homestead laws of a state**
- (5) Receiving public assistance
- (6) Titling and registering a motor vehicle
- (7) Preparing a new last will and testament which includes the state of domicile.

(Emphasis added).

Thus, a new domicile is not necessarily created when an individual moves to an address outside Indiana. Instead, the individual must move to the new non-Indiana address and have intent to remain at that non-Indiana address.

Additionally, under Indiana law "[h]omestead" is defined as "an individual's principal place of residence that is located in Indiana" and that "the individual owns" IC § 6-1.1-12-37(a)(2). A taxpayer is entitled to claim a deduction, known as homestead deduction, against taxes imposed on his or her homestead property pursuant to IC § 6-1.1-12-37(e). When the taxpayer is no longer qualified for the homestead deduction, the taxpayer must notify the auditor of the county where the homestead is located within sixty days after the dated of that change. IC § 6-1.1-12-37(f).

For guidance in determining a taxpayer's domicile, the Department refers to Croop v. Walton, 157 N.E. 275 (Ind. 1927). In Croop a taxpayer, Mr. Walton, moved from Sturgis, Michigan to Elkhart, Indiana by selling his Michigan residence and purchasing a residence in Indiana, where he and his wife lived for several years for the benefits of his wife's health. Indiana assessed Mr. Walton state income tax on his intangible property. Id. at 276-78. Mr. Walton disagreed, arguing that his intangible property was not subject to Indiana taxes because he was domiciled in Michigan. Id. The court found that Mr. Walton: owned and managed a company and stores in Michigan;

maintained his membership with lodges, clubs, and a church; on various occasions exercised his civil and political rights; and that Sturgis was used in his legal documents, including insurance policies, mortgages, leases, contracts, and other instruments. Ruling in favor of Mr. Walton, the court concluded that Mr. Walton did not change his domicile from Michigan to Indiana and his intangible property was not subject to certain Indiana taxes. The court explained, in relevant part, that:

The word "inhabitant," as used in our statute regulating the imposition of taxes, means "one who has his domicile or fixed residence in a place." **"If the taxpayer has two residences in different states, he is taxable at the place which was originally his domicile, provided the opening of the other home has not involved an abandonment of the original domicile and the acquisition of a new one."**

No precise or exact definition of the term "**domicile**," which responds to all purposes, seems to be possible. It is the place with which a person has a settled connection for legal purposes, either because his home is there or because it is assigned to him by the law, and **is usually defined as that place where a man has his true, fixed, permanent home, habitation, and principal establishment, without any present intention of removing therefrom, and to which place he has, whenever he is absent, the intention of returning.**

Many cases collected in the works just cited have held that at times the cognate terms "residence" and "domicile" are synonymous, but many other cases there cited and quoted from have held that the two terms, when accurately used, are not convertible, but that there is a very clear and definite distinction between them. "Domicile," . . . "is a residence acquired as a final abode. To constitute it there must be (1) residence, actual or inchoate; (2) the nonexistence of any intention to make a domicile elsewhere." "The domicile of any person" . . . "is, in general, the place which is in fact his permanent home, but is in some cases the place which, whether it be in fact his home or not, is determined to be his home by a rule of law."

"Residence is preserved by the act, domicile by the intention." "Domicile is not determined by residence alone" but upon a consideration of all the circumstances of the case.

Domicile is of three kinds-domicile of origin or birth, domicile by choice, and domicile by operation of law. . . . **To effect a change of domicile, there must be an abandonment of the first domicile with an intention not to return to it, and there must be a new domicile acquired by residence elsewhere with an intention of residing there permanently, or at least indefinitely.**

Id. at 277-78. (Internal citations omitted) (**Emphasis added**).

In *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), the Indiana Supreme Court reiterated similar analysis and determined that Mr. Bayh met the residency requirement for the office of Governor because Mr. Bayh's domicile remained in Indiana even though Mr. Bayh moved to different states for various reasons for many years. Specifically, the court illustrated, in relevant part, that:

Once acquired, domicile is presumed to continue because "every man has a residence somewhere, and . . . he does not lose the one until he has gained one in another place." Establishing a new residence or domicile terminates the former domicile. **A change of domicile requires an actual moving with an intent to go to a given place and remain there. "It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact . . . [T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile."**

A person who leaves his place of residence temporarily, but with the intention of returning, has not lost his original residence.

Residency requires a definite intention and "evidence of acts undertaken in furtherance of the requisite intent, which makes the intent manifest and believable." A self-serving statement of intent is not sufficient to find that a new residence has been established. Intent and conduct must converge to establish a new domicile.

Id. at 1317-18 (Ind. 1988). (Internal citations omitted) (**Emphasis added**).

During the protest process, Taxpayer submitted additional documentation to support his assertions that he was not an Indiana resident and did not owe Indiana income tax for the tax year 2011. The documents included his 2011 Ohio tax return, his Ohio lease agreement, W-2s listing his Ohio address as payee, the listing of his Indiana

home with a real estate agent, and an Ohio golf membership. Taxpayer also stated that he moved back to Indiana for his ailing mother and work in 2012.

The Department determined that Taxpayer was domiciled in Indiana in 2011 based on Taxpayer's use of the homestead deduction, Indiana driver's license, Indiana car registration, and Indiana gun permit. Taxpayer's documentation does not rebut the Department's position that he was not domiciled in Indiana. When a taxpayer claims the Indiana homestead deduction, they are receiving a deduction on their property taxes, and verifying the local government that they are not only living in that residence but that the residence is their principal residence. IC § 6-1.1-12-37(a)(2). Generally, when a taxpayer leaves Indiana without removing the Indiana homestead deduction on its Indiana residence, this fact calls into question whether the taxpayer is truly abandoning his Indiana residence. Furthermore, Taxpayer is simultaneously receiving a property tax deduction in Indiana for a residence that Taxpayer is implicitly characterizing as his principal residence; while at the same time avoiding Indiana state income tax by claiming not to be domiciled in Indiana. Taxpayer's documentation failed to establish that he unqualifiedly abandoned his domicile in Indiana in 2011 and never intended to return to Indiana.

In short, any individual who was domiciled in this state during the taxable year is a resident. IC § 6-3-1-12(a). "A change of domicile requires an actual moving with an intent to go to a given place and remain there. It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact. . . . [T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile." Bayh, 521 N.E.2d at 1317. Taxpayer failed to do so. Therefore, Taxpayer has not met the burden of proving the proposed assessment wrong, as required by IC § 6-8.1-5-1(c).

Taxpayer argues that if he is considered a resident he should be credited for Ohio state tax paid. IC § 6-3-3-3 states that:

(a) Whenever a resident person has become liable for tax to another state upon all or any part of his income for a taxable year derived from sources without this state and subject to taxation under [IC 6-3-2](#), the amount of tax paid by him to the other state shall be credited against the amount of the tax payable by him. Such credit shall be allowed upon the production to the department of satisfactory evidence of the fact of such payment, except that such application for credit shall not operate to reduce the tax payable under [IC 6-3-2](#) to an amount less than would have been payable were the income from the other state ignored. The credit provided for by this subsection shall not be granted to a taxpayer when the laws of the other state, under which the adjusted gross income in question is subject to taxation, provides for a credit to the taxpayer substantially similar to that granted by subsection (b).

Taxpayer provided his Ohio state tax return for 2011 and his W-2s which lists his Ohio address as payee. Taxpayer has provided "satisfactory evidence" that he qualifies for the credit. Thus, an audit review will determine the credit and any tax still owed to Indiana.

FINDING

Taxpayer's protest is sustained in part and denied in part.

II. Tax Administration - Non-Filed Penalty and Interest.

DISCUSSION

Taxpayer requests that the Department abate the penalty and interest. Pursuant to IC § 6-8.1-10-3(a), the Department may assess a penalty if the taxpayer "fails to file a return on or before the due date" There is no provision in the statute or regulations that allows the Department to waive this penalty.

Indiana imposes interest on overdue tax pursuant to IC § 6-8.1-10-1(a), which states:

If a person fails to file a return for any of the listed taxes, fails to pay the full amount of tax shown on the person's return by the due date for the return or the payment, or incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment.

IC § 6-8.1-10-1(e) provides that the Department may not waive interest. However since Taxpayer qualifies for the credit provided by IC § 6-3-3-3 the amount of base individual income tax due to Indiana for 2011 will be reduced in a supplemental audit. Penalty and interest will be recalculated to reflect the revised amount of tax due.

FINDING

Taxpayer's protest of the penalty and interest is denied.

SUMMARY

For the reasons discussed above, Taxpayer's protest of the Department's proposed assessment of income tax for the 2011 tax year is denied. However, Taxpayer's protest for credit of tax paid to another state is sustained. Taxpayer's protest of the penalty and interest is denied, although these amounts will be recalculated.

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